

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENTS
PUBLIC HEARING**

In the matter of:

APPLICATION OF THE COUNCIL OF EARLY CHILDHOOD	Case #16193
APPLICATION OF E. FULTON BRYLAWSKI	Case #16247
APPEAL OF CASLIN ASSOCIATES, L.P.	Case #16236

Under Contract No. DTCG39-89-D-E92532

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

Wednesday
July 2, 1997

The above entitled matter came on for hearing, pursuant to notice, at 1:00 p.m.

BEFORE:

SUSAN MORGAN HINTON, Chairperson
MAYBELLE TAYLOR BENNETT, Member
LAURA M. RICHARDS, Member

STAFF PRESENT:

MADELIENE DOBBINS
REGINALD LYONS
TRACY WITTEN ROSE
JOHN NYARKU

I N D E XWITNESS:

David Pride	18
Sharon Ambrose (statement)	
Carol Mitten	57
Mr. Nyarku	78

EXHIBITS:

<u>IDENTIFIED</u>	<u>RECEIVED</u>
-------------------	-----------------

Applicant

Exhibit 41	20
Exhibit 44	27

1 P-R-O-C-E-E-D-I-N-G-S

2 1:07 p.m.

3 CHAIRPERSON HINTON: The hearing will please
 come to order. Good afternoon, ladies and gentlemen. This is the
 July 2 hearing of the Board of Zoning Adjustment of the District of
 Columbia. I am Susan Morgan Hinton, your Chairperson. Joining me
 today are Laura Richards, Vice Chair, and Maybelle Taylor Bennett
 representing the Zoning Commission. Copies of today's hearing
 agenda are available to you. They are located to my left near the
 door. 10

11 All persons planning to testify, either in favor or
 opposition, are to fill out two witness cards which are located at each
 end of the table in front of us. Upon coming forward to speak to the
 Board, please give both cards to the reporter who is sitting to my right.

15 The order of procedure for special exception and
 variance cases will be as follows: statement of witnesses of the
 applicant; Government reports including the Office of Planning, the
 Office of Zoning, Department of Public Works, and ANC; persons or
 parties in support; persons or parties in opposition; and closing
 remarks by the applicant.

21 Do we have an appeal? We do have an appeal.
 Cross-examination of witnesses is permitted for persons or parties
 with a direct interest in the case. The record will be closed at the
 conclusion of each case except for any material specifically requested
 by the Board. The Board and the staff will specify at the end of the

hearing exactly what is expected.

2 The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons present not engage any members in conversation. The Board will make every effort to conclude the public hearing as near as possible to 6:00 p.m. If the afternoon cases are not completed at 6:00, the Board will assess whether it can complete the cases pending on the agenda.

9 At this time, the Board will consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as requests for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given. If you are not prepared to go forward with the case today, or if you believe the Board should not proceed, now is the time to raise such a matter. Does the staff have any preliminary matters?

17 MR. LYONS: Madam Chair, there is a preliminary matter related to the last case of the afternoon, 16236. There is a request from the applicant for a postponement. I believe counsel for the applicant is present to present that.

21 MR. ROSENFELD: Madam Chairperson, my name is Douglas Rosenfeld. I am with the law firm of Griffin, Berenson & Murphy. We represent the Appellant, Caslin Associates, limited partnership, in this matter. Mr. Mark Griffin has been the attorney for Caslin Associates for going on two or three years now. I have just joined this firm as of a month ago. I am not really familiar with this

case. Mr. Griffin was called to a hearing up in Montgomery County Circuit Court today. When that conflict became apparent, we sent a letter down here on June 17th. I spoke to Ms. Rose at that time to ascertain whether this would be the way to do it. Since I am a newcomer to this forum and I am really not familiar with it.

6 We sent the letter and requested this postponement. I understand that I needed to be here today in order to formally do so, and that is what I am doing now.

9 CHAIRPERSON HINTON: Very good. We appreciate that. Let's grant the postponement and schedule this case for -- 11

12 MR. ROSENFELD: If I may interject just one other thing? 13

14 CHAIRPERSON HINTON: Yes.

15 MR. ROSENFELD: There is a companion case to this which is proceeding at about -- well, not at about the same time, a little later. This is a solid waste transfer facility. I don't know if you are familiar with the background of it. Casin Associates is the owner of the property. The manager of the property for Casin currently is Waste Management of Maryland, Inc. Both Waste Management of Maryland, Inc. and Casin have applied for identical certificates of occupancy for that property. Casin's was denied first by Mr. Nunley, and that is the subject of this appeal. A denial by Mr. Nunley was issued as to Waste Management's application for a certificate of occupancy on the 20th of May. And it is our understanding that Waste Management of Maryland will be filing its own appeal in this next

coming week. If Waste Management of Maryland's certificate of occupancy is granted, then they will be purchasing the facility and that would moot our application for a certificate of occupancy.

4 CHAIRPERSON HINTON: Did I misunderstand? I thought you said that their request for a C of O was just denied.

6 MR. ROSENFELD: That is correct, but they are going to appeal it. So they will be in the same position as we are --

8 CHAIRPERSON HINTON: So they are going to appeal it here at the BZA?

10 MR. ROSENFELD: That is correct. And they will be in the same position that we are now in in approximately one week's time. And I think that our request would be that you postpone us until sometime after you deal with their application or their appeal. Because if you grant their appeal, we don't have to come back. There is no need to do that.

16 CHAIRPERSON HINTON: Okay. There is also the issue that the Zoning Commission has taken some action on waste transfer

19 MS. BENNETT: That is right, Madam Chairperson. The Zoning Commission has taken proposed action on solid waste handling facilities.

22 CHAIRPERSON HINTON: Okay.

23 MS. BENNETT: That proposed action has been forwarded to the Office of Corporation Counsel. I believe that that revised proposed action and the final action will be taken fairly soon. And so that would help clarify matters for all applicants who have such

facilities and who have been issued interim certificates of occupancy. So Staff may be guided by that when they begin to set alternative hearing dates.

4 CHAIRPERSON HINTON: Very good.

5 MS. BENNETT: I mean meeting dates -- hearing
dates. 6

7 CHAIRPERSON HINTON: Hearing dates. Mr.
Lyons? 8

9 MR. LYONS: I would suggest a November hearing.

10 MR. ROSENFELD: I understand you can't -- it is
difficult to schedule a hearing for waste management when you don't
have their appeal in front of you yet. So that is not something that we
can do. 13

14 CHAIRPERSON HINTON: So we cannot schedule
that. What we are doing at this time is scheduling the continuation of
the case that is on our agenda today. Late in November? 16

17 MR. LYONS: November 19?

18 CHAIRPERSON HINTON: Very good.

19 MR. ROSENFELD: Thank you.

20 CHAIRPERSON HINTON: You are welcome. Maybe
some other things will occur between now and then.

22 MR. LYONS: Right. It will be November 19, at 9:30
a.m. 23

24 MR. ROSENFELD: Will you notice us?

25 MR. LYONS: No. This will be the only notice given.

26 MR. ROSENFELD: Thank you very much.

1 CHAIRPERSON HINTON: Thank you. Are there any
other preliminary matters?

3 MR. LYONS: Staff has none.

4 CHAIRPERSON HINTON: Okay. I see none in the
audience. Let's move on to our first case.

6 MR. LYONS: The first case is application 16193 of
the Council of Early Childhood pursuant to 11 DCMR 3108.1 and
3107.2 for a special exception under Section 217 to establish non-
profit office use and a variance from the off-street parking requirement
for a structure in an R-5-D district at premises 2460 16th Street, N.W.,
Square 12571, Lot 50. All persons wishing to testify in this application,
please rise to take the oath.

13 (Whereupon, all witnesses to be called in the above-
entitled matter were duly sworn.)

15 MR. LYONS: Will the applicant come forward?

16 CHAIRPERSON HINTON: Could you give your name
and home address for the record?

18 MR. CLARK: Yes. My name is Joe Clark. I am an
architect. My address is 3530 T Street, N.W., Washington, D.C.

20 CHAIRPERSON HINTON: Before you start, I have a
question for you. There has been an application to the Historic
Preservation Review Board, I believe?

23 MR. CLARK: That is correct.

24 CHAIRPERSON HINTON: For landmark status of the
building, is that right?

26 MR. CLARK: Yes.

1 CHAIRPERSON HINTON: What is the status of that
application?

3 MR. CLARK: It is going to be heard the 29th of
August, and for all we know, everything we have been told, it is going
to be approved.

6 CHAIRPERSON HINTON: And when -- would they
take action on that date? Is that how HPRB -- or would there be some
kind of delay before you get a decision, do you know?

9 MR. CLARK: They will take action on that date.

10 CHAIRPERSON HINTON: So this would be my
recommendation then for you. That we postpone this hearing until
sometime in September. The reason for that is that you are here
under 217 of the zoning regulations. In order for this Board to approve
that application, your building has to be either a historic landmark or in
a historic district, which currently it is not.

16 MR. CLARK: Right.

17 CHAIRPERSON HINTON: Once that determination is
made, then this Board can go ahead with your application as it has
been submitted.

20 MR. CLARK: Okay.

21 CHAIRPERSON HINTON: If it is determined to be a
historic landmark, you will not need a variance for parking.

23 MR. CLARK: Right.

24 CHAIRPERSON HINTON: So this will be a much
easier case to move forward once that happens, and I think it is in
your best interest really.

1 MR. CLARK: It would be good if it could be
September.

3 CHAIRPERSON HINTON: Let me check with our
staff to see what our September calendar looks like.

5 MR. LYONS: September -- I would recommend
September 17.

7 CHAIRPERSON HINTON: That is good. I don't want
it -- in case there is any delay on HPRB, I want to make sure that --

9 MR. CLARK: I will check and see what the HPRB
says about what the schedule will be for approval.

11 CHAIRPERSON HINTON: We have to set a date
certain today.

13 MR. CLARK: Oh, you do?

14 CHAIRPERSON HINTON: Yes. If you think you
need more time, we could --

16 MR. CLARK: No, I think the 17th is okay. I think that
will be okay.

18 CHAIRPERSON HINTON: Okay.

19 MR. LYONS: September 17 at 2:00.

20 CHAIRPERSON HINTON: So this will be continued
to September 17 at 2:00 p.m.

22 MR. CLARK: Thank you very much.

23 CHAIRPERSON HINTON: When you do get that
documentation from HPRB, you will want to submit it into this record.

25 MR. CLARK: Yes.

26 CHAIRPERSON HINTON: Okay. Thank you. The

next case, please?

2 MR. LYONS: Ms. Rose will call the next case,
Madam Chairperson.

4 CHAIRPERSON HINTON: Thank you.

5 MS. ROSE: The next application is 16247, the
application of E. Fulton Brylawski pursuant to 11 DCMR 3108.1 and
3107.2 for a special exception under Sections 217, 1201.3, and 1202
to establish the office of the nonprofit organization and a variance from
the minimum gross floor area requirement paragraph 217.1(b), or in
the alternative, a special exception under Sections 2003 and 1202 to
change a nonconforming use from lawyers and professional offices to
the offices of a non-profit organization on the first floor through third
floors of a structure in a CAP/R-4 district at premises 224 East Capitol
Street, N.E., Square 759, Lot 804. Would all persons wishing to testify
in this application please rise and take the oath?

16 (Whereupon, all witnesses to be called in the above-
entitled matter were duly sworn.)

18 MS. ROSE: Would the applicant come forward?

19 CHAIRPERSON HINTON: Mr. Schauer, we have a
written request here for party status on behalf of the Capitol Hill
Restoration Society.

22 MR. SCHAUER: Yes. That is the matter I wish to
address, yes.

24 CHAIRPERSON HINTON: Very good. Party status is
granted.

26 MR. SCHAUER: Thank you.

1 CHAIRPERSON HINTON: You are welcome.

Anyone else seeking party status? Very good. Mr. Risherg.

3 MR. RISHERG: Good afternoon, Madam

Chairperson, Ms. Bennett and Ms. Richards. I am John R.

R I S H E R G. I appear today on behalf of the applicant, E. Fulton Brylawski, the owner of the subject property. I also am a member of the Executive Committee of the Supreme Court Historical Society, the contract purchaser of the property, and have made that relationship with the Society clear from the beginning.

10 We have, Madam Chairperson, only two witnesses that I anticipate. One is Mr. David Pride, who is the taller of the three gentlemen immediately behind me, the Executive Director of the Society. To Mr. Pride's right is Leon Silverman, the President of the Supreme Court Historical Society. And directly behind Mr. Silverman is the applicant, namely E. Fulton Brylawski.

16 In addition to Mr. Pride, I also anticipate calling, unless the Board should find it unnecessary, Carol M I T T E N, MAI. Those are her credentials as an appraiser. Ms. Mitten has submitted an appraisal report, a summary of which is attached as an exhibit to the applicant's pre-hearing statement. There is one minor preliminary matter I would like to call to the Board's attention. The application seeks a special exception to the subject property which is described as having three stories and a basement. All of the documents refer to it that way save for the notice of public hearing that the Board published with us. Therefore, that notice to be deemed amended to refer to the entire building, that is, to all three stories and

the basement.

2 CHAIRPERSON HINTON: Very good.

3 MS. RICHARDS: Madam Chairperson?

4 CHAIRPERSON HINTON: Yes.

5 MS. RICHARDS: Just so I will be quite clear on what I am listening to. Mr. Risherg said he is seeking a special exception. The relief is advertised in the alternative. The Office of Zoning report speaks to an area of variance and the party in opposition says that it is a special exception that ought to be a variance. So what are we talking about Mr. Risherg?

11 MR. RISHERG: The opposition, I take it Mr. Richards, is a reference to the Capitol Hill Restoration Society. I believe it is more accurate to say that it contends that -- or would construe our application as seeking a use variance. That, in fact, is not the case. The applicant seeks a special exception under the provisions of the zoning regulation that explicitly provide for nonprofit use in the R-4 and more restrictive residential zones. And to the extent that this Board should deem it relevant, we seek an area variance from the 10,000 square foot ancillary provision under which the application is being filed. That ancillary 10,000 square foot building size provision is Section 217.1(b). We do not seek a use variance. That is the proposition that the Capitol Hill Restoration Society seemingly would urge is a relevant one. We are prepared to address that at the appropriate time.

25 CHAIRPERSON HINTON: So a special exception under 217 with an area variance under 217.1(b)?

1 MR. RISHERG: That is correct.

2 CHAIRPERSON HINTON: Very good.

3 MR. RISHERG: Now, Ms. Richards --

4 CHAIRPERSON HINTON: How long did you
anticipate your presentation would be?

6 MR. RISHERG: I would trust that everything can be
concluded within 3 hours. I am allowing for whatever might be said on
the other side. My expectation is that with Mr. Pride we can handle
this in 20 minutes or so and with Ms. Mitten, it is probably 10 minutes.

10 CHAIRPERSON HINTON: So you need a half an
hour for your portion of the hearing?

12 MR. RISHERG: I would anticipate 20 minutes to 30.
I don't know what the pace is going to be as we try to get started with
Mr. Pride, but surely no more than 10 minutes with Ms. Mitten.

15 CHAIRPERSON HINTON: Very good. We will try to
stick to 20 to 30 minutes and the Board members, let's try to hold our
questions until the end of the applicant's presentation if we can to
expedite things.

19 MR. RISHERG: Thank you very much.

20 CHAIRPERSON HINTON: Thank you.

21 MR. RISHERG: May I put Mr. Pride before you,
please?

23 CHAIRPERSON HINTON: Absolutely.

24 MR. RISHERG: Thank you.

25 DIRECT EXAMINATION

26 BY MR. RISHERG:

1Q Mr. Pride, would you state for us please your full name and your occupation and occupation address?

3A I am David Pride, and I am Executive Director of the Supreme Court Historical Society at 111 Second Street, N.E., Washington, D.C.

6Q What, Mr. Pride, is the interest of the Supreme Court Historical Society in the subject property?

8A We seek to transform the property into our new headquarters building. We have outgrown our current headquarters at 111 Second Street, and we would like to move into a larger building.

11Q And is there an agreement between the Society and the owner of the building?

13A Yes, there is. We have a contingency contract with them. 14

15Q And when you say a contingency contract, would you just generally state what you mean by that?

17A It is contingent on the Society acquiring proper zoning so that we can take occupancy of the building.

19Q Describe, if you will, Mr. Pride, the Society.

20A We are a non-profit educational association. We have been around since 1974 -- incorporated in the District of Columbia in 1974. Primarily a membership organization. We have 5,200 members. We put on a variety of programs. A lecture series in the Supreme Court that are open to the general public, books on the Supreme Court History. We fund research projects including a documentary history of the Court's first 10 years. A lot of people don't

know it, but when the British came to town in 1814, they burned the Capitol Building with the Court's records, and we have been trying to reconstruct that history for some time. We have an oral history program that we record former justices and hope to provide a sort of a living history for the future. We like to describe it as imagining if say John Marshall were able to be here and describe what happened in Marbury vs. Madison. We think the same thing would be of value if you had Thurgood Marshall describing Brown vs. The Board of Education say 200 years from now, and indeed we do. We recorded Justice Marshall before he died and it is part of our collection.

11 As I said, we have books and there are quite a large variety of titles. A collection of illustrated biographies of the Justices, the Supreme Court in the Civil War, Jewish Justices of the Supreme Court, the Supreme Court in World War II.

15Q That is fine, Mr. Pride. I was only asking for a general summary. Let me ask -- maybe the Staff wants to mark this as Exhibit 1 as the appropriate designation.

18 (Whereupon, the
19 document was marked as
20 Applicant Exhibit 41 for
21 identification.)

22 MR. RISHERG: I am handing Madam Chairman and Mr. Schauer a copy of the document. I understand his organization has been granted party status.

25 MS. BENNETT: Mr. Risherg, you are walking up and down without the benefit of a microphone, and it would be useful if you

could, to the extent possible, make sure you stay near one.

2 MR. RISHERG: Thank you very much, Ms. Bennett.

3 MR. LYONS: Mr. Risherg, this will be marked as
Exhibit 41.

5 MR. RISHERG: 41? Thank you, sir.

6 CHAIRPERSON HINTON: Is there anyone here from
the ANC notice, please? Okay. Could you come to a microphone if
you are going to speak to the Board, please?

9 UNIDENTIFIED SPEAKER? I don't know that we
need to I thought we submitted a written comment that was
supportive of the case.

12 MS. BENNETT: You are an automatic party. Mr.
Risherg is passing out some information that you may be entitled to
receive.

15 CHAIRPERSON HINTON: I am just trying to make
sure that all the parties get the information. So if you are here, Mr.
Risherg needs to give you a copy of what he is handing out. Thank
you. 18

19 MS. BENNETT: And if you plan to testify, you
probably need to be sworn in.

21 UNIDENTIFIED SPEAKER: I wasn't planning on it.

22 CHAIRPERSON HINTON: Okay.

23 MR. LYONS: Madam Chair, the Board has received
a number of additional documents today related to this case, and we
are packaging those for you at this moment.

26 CHAIRPERSON HINTON: From the applicant?

1 MR. LYONS: Not from the applicant, but from others,
including the ANC report.

3 CHAIRPERSON HINTON: Okay. Mr. Risherg, can
you continue while we are waiting for that?

5 MR. RISHERG: Yes. Mr. Lyons has marked as
Exhibit 41 a document of which a copy is being provided to each of
you. I need the original, Mr. Lyon, if I may, so that I may give it to the
witnesses

9 BY MR. RISHERG:

10Q Mr. Pride, do you recognize Exhibit 41? Would you
examine the entire document? There are a number of pages.

12A Yes.

13Q And what do you recognize it to be?

14A It was our application for exempt property use for our
current property at 111 Second Street.

16Q I believe it is more accurately described, is it not, as
the use report of the Society?

18A Yes.

19 MR. RISHERG: We offer it into evidence, Madam
Chair.20

21 (Whereupon, the
22 document marked as
23 Applicant Exhibit 41 for
24 identification was
25 admitted.)

26 MS. RICHARDS: Madam Chair, I am willing to

stipulate the nature of the use under the tax laws of the country and the District.

3 CHAIRPERSON HINTON: Agree. So stipulated.

4 BY MR. RISHERG:

5Q Mr. Pride, would you go to the attachment to the Exhibit 6- attachment A?

7 MR. RISHERG: And if I may, because it is quite preliminary, Madam Chair.

9 BY MR. RISHERG:

10Q Attachment A describes, does it not, the purpose of the Society and its activities in greater detail than the testimony you gave a few moments ago?

13A Yes, that is correct.

14Q All right. What, Mr. Pride, does the Society do with respect to the Supreme Court building?

16A Well, among other things, we operate a gift shop in the Supreme Court which sells various items including our publications and other educational materials to the building's one million annual visitors. We conduct lecture series in the Court, usually 8 or 10 a year, at least during the past several years. They usually involve a distinguished scholar or sometimes even one of the Justices coming to speak. All of them are introduced by the Justices and are followed with a reception in the Court for our members. We also purchase acquisitions for the Court or otherwise seek to acquire them. If you have been in the building, many of the busts and portraits and furnishings throughout the building are acquired by the Supreme Court

Historical Society and put on display in the Court building by the curator's office. We are trying to provide an educational environmental for the Court and we deal with the Court on a daily basis seeking to do exactly that.

5Q Mr. Pride, what is the relationship between the Society's staff or membership, if you will, and the Justices of the Supreme Court?

8A Well, the Chief Justice of the United States is our honorary chair and there are a number of retired Justices who are honorary members of our board. In fact, I think all of the retired Justices are. And the administrative assistant to the Chief Justice, which he is one of the Court's statutory officers, is under our by-laws a member of our Executive Committee and our Board of Trustees.

14Q Are there any communications between the Society through its officers and/or staff and the Justices of the Supreme Court?

17 CHAIRPERSON HINTON: I hate to interrupt, Mr. Risher, but I think the connection of the Society to the Supreme Court building is fairly well covered and documented in what has been submitted, and the Board members understand the need and the usefulness of proximity.

22 MR. RISHERG: Very well. And proximity to the Court, that is that we are located immediately across the street from the Court.

25 CHAIRPERSON HINTON: We understand that.

26 MR. RISHERG: Thank you very much.

1 BY MR. RISHERG:

2Q Mr. Pride, what led the Society to select the subject
site? 3

4A Well, we surveyed all of the properties on the Hill
within a two or three block area looking for something that was not so
very large. Because after all, we only have four staff members and
don't really anticipate any growth in the near future. It is hard to say
what is going to happen, of course. But we haven't had any staff
growth at the headquarters for quite some while and I don't see that
we are likely to otherwise. But we are up to our ears in books and
materials relating to the Historical Society's founding and pieces of the
collection of the Court that are just filling the place to the brim, and we
have nowhere to put all of it. So we started looking around for a larger
site and the Brylawski property was close in proximity to the Court. It
was large enough but not too large, and it also had -- I don't want to
call it a commercial history, but at least a non-residential history, and
the Society was very concerned that the neighborhood not object to
what we were looking to do. So we ruled out properties that had solid
residential backgrounds. The Brylawski property had been, as far as
we could determine, a law office since at least 1958 and had housed a
tailor shop perhaps as early as the turn of the century. So it --

22Q I believe you have answered my question. You said
we surveyed. Those were your terms when you began to answer the
question. The we is a reference to whom? Did the Society rely upon
any professional advice?

26A Yes. We contracted with I guess Carol Mitten to --

1Q You will have to describe Carol Mitten.

2Q Carol Mitten is an architectural --

3Q You don't mean architecture.

4A I mean zoning --

5Q She is an appraiser.

6A An appraiser, yes. And we also spoke to members of our board who are -- or I should say committee members who are architecturally schooled. One of them was Nick Papas, who was the architect for Colonial Williamsburg for several years. He recently retired, but he had done the architectural work when we restored the building we are in now. And we had sought his advice in evaluating the various properties. And the Society established a committee, an ad hoc headquarters search committee.

14Q Did you use any other professional assistance in evaluating the Brylawski site beyond Ms. Mitten?

16A Yes. We employed a structural engineer and an historical architect.

18Q Very well.

19 MR. REAMER: Madam Chair, I am handing Mr. Lyons the applicant's document that I would like to have assigned the exhibit number next in order as well as copies of the same for distribution to each member of the panel. I am handing a copy of the same to Mr. Schauer. To expedite matters, I will just give to Mr. Pride another copy so that Mr. Lyons can hold onto the original.

25 (Whereupon, the

26 document was marked as

1 Applicant Exhibit 44 for
2 identification.)

3 CHAIRPERSON HINTON: Do we have a copy for me
also? 4

5 MR. RISHERG: Oh, I am sorry. We certainly do.

6 CHAIRPERSON HINTON: Thank you.

7 MR. LYONS: This document will be marked as
Exhibit 44.

9 MR. RISHERG: Exhibit 44?

10 MR. LYONS: Yes.

11 MR. RISHERG: May I ask, Mr. Lyons, how it is that
we jumped from Exhibit 41 to Exhibit 44?

13 MR. LYONS: The two intervening numbers go to
submissions that were made today. One of which is the Capitol Hill
Restoration Society and one other.

16 MR. RISHERG: Thank you.

17 BY MR. RISHERG:

18Q Mr. Pride, what is Exhibit 44 before you?

19A Well, it is actually pages of a map I developed of non-
residential and residential use on Capitol Hill in four blocks or five
blocks. I suppose, if you include the Capitol Building --

22Q Mr. Pride, let me stop you. Is Exhibit 44 plain and
simply a map of a certain section of Capitol Hill running from the
Capitol four blocks to the east along East Capitol Street?

25A Yes.

26Q Very well. And a mark-up of the exhibit is

immediately over my left shoulder, is it not?

2A Yes, it is.

3 MR. RISHERG: And if I may, Madam Chair, just to make sure that everyone is oriented.

5 BY MR. RISHERG:

6Q Mr. Pride, the subject property, Mr. Brylawski's property, is designated in the Exhibit and on the mark-up as the proposed site of HCHS headquarters?

9A It is designated that way on the map. I think I worded it slightly differently on the Exhibit, which is the third page. It says right below the third picture, the Supreme Court Historical Society's proposed headquarters and describes the building.

13Q Mr. Pride, going from west to east, that is starting 200 East Capitol Street and standing on the north side of East Capitol Street, just give us a very brief oral statement of the use of each of the properties sequentially?

17A Well, 200 is the Florida House, and that is run by the Florida delegation. I have never quite figured out what they do in there except --

20Q The Florida delegation to what?

21A Congress.

22Q Thank you.

23A The next two I have as residences. I understood in talking with Mr. Schauer, I guess, and Mr. Wolfe from the Capitol Hill Restoration Society that they may actually have some other use. But I was not intrusive and I didn't go inside and insist upon everyone telling

me what each property was. I took it from face value what they were from the outside. The next was obviously the Lutheran Church of the Reformation. The next two properties, 220 and 222, are also owned by the Church and they run various outreach programs in there. I don't know exactly what they are, but they are run by the Church. 224, of course, is Mr. Brylawski's law firm. 226 is also Church property. 228 and 230 are residences, and 232 is another law firm.

8Q Go to the next block, sir, staying on the same side of the street.

10 CHAIRPERSON HINTON: Okay. Now other than establishing that this area is mixed with residential and offices, is there some purpose in going through property by property?

13 MR. RISHERG: It is to show the intensity of the nonresidential uses that are permitted here. But you have essentially captured it.

16 CHAIRPERSON HINTON: Okay. We get the idea.

17 BY MR. RISHERG:

18Q Would you continue, Mr. Pride?

19 CHAIRPERSON HINTON: No. You've give us a very thorough document here and we are able to read it on our own.

21 MR. RISHERG: Oh, very well.

22 CHAIRPERSON HINTON: Thank you.

23 MR. RISHERG: Thank you.

24 BY MR. RISHERG:

25Q Now, Mr. Pride, what communication, if any, has the Society had with the community -- and by community, I mean the

geographical area and its people surrounding the subject site about the Society's interest in the property?

3A Well, we met with the Stanton Park neighborhood association and with ANC 6B and 6A. It is in 6A, but 6B asked us as a matter of courtesy because they were across the street, and we went and made a presentation there as well. And also the advisory neighborhood commission I guess as a whole. And then the Capitol Hill Restoration Society.

9Q Now when did we first meet with the Capitol Hill Restoration Society?

11A I believe the first meeting was with Mr. Wolfe back in November, if I recall correctly.

13Q Of what year?

14A 1996.

15Q And was there a subsequent meeting with the Society?

17A We had several talks on --

18Q Mr. Pride, would you answer my question? Was there a subsequent meeting with the Society?

20A Oh, yes, there was.

21Q And when was that? Sometime this year?

22A Yes, it was.

23Q And when you say the Capitol Restoration Society, you are referring to what? What was the nature of the gathering?

25A Well, they had a zoning committee meeting at their headquarters on Pennsylvania Avenue.

1Q Thank you, sir.

2 MR. RISHERG: I would ask that Mr. Lyons mark the
next document with the exhibit number next in order and have given
him copies for distribution to the members of the panel.

5 MR. LYONS: It will be marked as Exhibit 45.

6 MR. RISHERG: Thank you.

7 (Whereupon, the
8 document was marked as
9 Applicant Exhibit 45 for
10 identification.)

11 MR. RISHERG: And I am now giving one of these to
Mr. Schauer, the ANC representative.

13 BY MR. RISHERG:

14Q Mr. Pride, would you briefly describe for us, please,
what Exhibit 45 is?

16A I don't have a copy of it.

17Q Oh, I am sorry. I think that is because I didn't realize I
would have to give out all.

19 MR. RISHERG: Mr. Schauer, let me have yours back
and I will give it right back to you, sir.

21 BY MR. RISHERG:

22A Oh, it is our dear neighbor letter. Part of the Society's
effort to make sure that everyone realized we were doing this all
aboveboard was we drafted a letter to hand out to everyone within I
think it was 200 feet in any direction. But we handed them out a good
bit more liberally than that and we also handed them out at all of the

meetings that we had with the various neighborhood groups.

2 MR. RISHERG: Madam Chair, I would ask the Board
 -- well, I would note for the record that among the submissions to the
 Board, if I understand it correctly, are letters from ANC 6A and 6B
 supporting this application, a letter from the Stanton Park zoning
 committee, perhaps it is the association itself, supporting this
 application, and a letter from the architect of the Capitol, which I
 believe would fairly be characterized as approving the granting of the
 special exception.

10 CHAIRPERSON HINTON: Right. Thank you. Those
 documents are in the record. And I would just note that there are
 about 10 minutes left of your time and we haven't started talking about
 the zoning issues.

14 BY MR. RISHERG:

15Q Mr. Pride, would you -- you have made mention of the
 size of the Society staff before. Would you describe what
 considerations, if any, the Society gave to traffic and parking in
 considering the subject site and what are the site's accommodations
 in that respect?

20A Well, it has four parking spaces and we have four
 staff members and not all of them drive. So the parking is more than
 ample at the new building. We anticipate that we won't bring any
 more traffic than we are bringing to the Hill now, which is pretty
 negligible. We do have a postman who comes everyday and the UPS
 man usually shows up several times a week. But frankly, most of our
 members belong to the Historical Society, not because they want to

come to our little townhouse, but they want to come to the Supreme Court, and that is what they do. If we are a club, it is the clubhouse.

3Q Mr. Pride, does the Society have any plans with respect to the sale of material at the subject site?

5A No, we don't.

6Q Does that mean that you have no plans or you will not be selling material at the subject site?

8A I don't anticipate selling anything at the subject site because we have a gift shop in the Supreme Court and that is where we sell things. And indeed, if we have any mail order business, we do that there too.

12Q With respect to the Society's present site, Mr. Pride, what plans does the Society have if it acquires the subject site and the zoning approvals are obtained?

15A Well, we plan to bring in an historical architect, renovate the building, return the facade to something that is historically accurate --

18Q Let me stop you, Mr. Pride. I think you inverted the question. With respect to the Society's present site.

20A Oh, I am sorry. We intend to turn it back into residential use.

22Q With respect to the subject site, what are the Society's plans?

24A We will renovate the property. We plan to use an historical architect to insure that the property assumes the proper historical character in the neighborhood and also upgrade all of the

safety systems in the building -- the electrical, fire safety, and that sort of thing?

3Q And what, if anything, Mr. Pride, has the Society done in the way of obtaining professional advice in respect to the matters you have just mentioned, namely the architectural characteristics and the structural features of the building?

7A We employed Mr. Otterbridge Horsey to do structural analysis of the building from an historical architect's perspective and to draft preliminary plans as to how the building might look if a substantial amount of money were spent on it. We also employed a structural engineer to analyze the building and tell us what the defects were and what needed to be corrected and brought up to what we would consider modern day safety.

14Q Mr. Pride, against the background of the information mentioned in your testimony, has there been a determination of whether the subject site, that is the Brylawski property, is compatible with present and proposed development of the neighborhood?

18A I am sorry, I don't understand.

19Q Has there been a determination or judgment made by you and the Society as to whether the intended use of the Brylawski site is compatible with the present and proposed development of the neighborhood?

23A Yes. I think we would say that it is compatible.

24Q Has there been a similar determination as to whether it is consistent with the goals and mandates of the United States Congress set forth in the master plan for future development of the

Capitol grounds and related areas?

2A Yes. We discussed that with the architect at the Capitol Office and they have indicated that it is in keeping with their plans. 4

5Q Has anyone, Mr. Pride, brought to the Society's attention any reason to think that the Society's use of the property would create any problems or concerns in the neighborhood?

8A Well, the Capitol Hill Restoration Society.

9Q And what was stated by the Capitol -- anyone else?

10A No.

11Q And what did the Capitol Hill Restoration Society state? 12

13A They felt -- and you will have to pardon me. I am not a lawyer, but the gist of their argument, I think --

15Q What is the inference when you say you are not a lawyer? 16

17A Well, these things concern zoning matters that are a little above my head.

19Q Go ahead, Mr. Pride.

20A But I understand that they think the dam will break and every other property in the area will suddenly switch over to some sort of nonprofit use if the Supreme Court Historical Society is allowed to move into the Brylawski property. 21

24Q Were those concerns, Mr. Pride, raised by and at the advisory neighborhood commission meetings and the Stanton Park community meeting to which you referred earlier? 25

1A They were not at the ANC 6A meeting. They were at the 6B meeting. Mr. Lyle Schauer appeared at the 6B meeting and suggested that the Society's seeking of I think it is termed a variance or an exception -- again the difference is a nuance to me -- but if we are able to convert something that is below 10,000 square feet to this use that somehow everyone else will seek to do the same.

7Q Now did you hear anything about the nature of the Society's use that raised concern?

9A No. In fact, Mr. Schauer has indicated on several occasions that he thought the Society was a good neighbor and was doing useful things and that we ought to be allowed to be on the Hill under certain circumstances. The problem has been, from what I can see, the circumstances that have been suggested to us by members of the Capitol Hill Restoration Society have been different from different meetings.

16Q You have answered my question. Finally, Mr. Pride, on this point, did you hear anything from the Capitol Hill Restoration Society in respect to its views about the cost of converting the subject property to a residential use?

20A Yes. Mr. Schauer also agreed that it would be too expensive to convert 224 East Capitol to a residential use. It would be prohibitive.

23 MR. RISHERG: Madam Chair, in concluding I would ask that the Board take judicial notice of the various attachments to the application for the subject's special exception. Among those attachments are the following: a survey of the property that shows its

higher configuration for commercial use. That survey is identified in the listing of attachments as Exhibit A-1. It is the so-called Menard Survey.³ The March 1997 photographs of the subject property.

4 BY MR. RISHERG:

5Q In that respect, Mr. Pride, who took those photographs?

7A I think almost all of the photographs I have seen I took. 8

9Q Any change in the exterior of the property since March of 1997?

11A Not as of yesterday.

12 MR. RISHERG: I believe that is all I have of this witness, Madam Chairperson.

14 CHAIRPERSON HINTON: Excuse me, Mr. Schauer, for one minute. Do the Board members have any questions? No?

16 MS. RICHARDS: I have none.

17 CHAIRPERSON HINTON: Thank you.

18 MR. SCHAUER: My name is Lyle Schauer. I am the zoning chair of the Capitol Hill Restoration Society.

20 CROSS EXAMINATION

21 BY MR. SCHAUER:

22Q Mr. Pride, you mentioned in your talk that you or the search committee had surveyed all properties within the three or four block area. Did that include the commercial districts in the Capitol Hill area? 25

26A Yes, it did.

1Q In particular, did it include the commercial districts around Stanton Square, which are three blocks from the Supreme Court? 3

4A Yes, it did. But we, in looking at those, determined that they were just too far away from the Court for our uses.

6Q They are three blocks.

7A Yes, I understand that.

8Q All right. On your map, Mr. Pride, you base this on what? The use of the buildings that you indicate here, what was that based on? 10

11A I walked up the street and looked at each of the properties. Some of them I -- you know, if it says Folger Shakespeare Library on the front, I assume it is. 13

14Q Is it your belief, then, that all of the apparent nonresidential use are in fact authorized? Are any of them illegal? 15

16A I don't know that. And indeed when we were talking before the meeting, you pointed out that I had missed some other offices that might have been on there that I might have marked, but they weren't apparent from the outside. 19

20Q Thank you.

21 MR. SCHAUER: I have no further questions. I do, Madam Chairperson, have a request to make of Mr. Risherg and of you. I would like to present Council member Sharon Ambrose from Ward 6 to make a statement. She has to leave on official business very shortly. She would normally be taken in order as our witness. If Mr. Risherg will agree, and I hope he will, we would like to put her on 22
23
24
25
26

to make a short statement.

2 CHAIRPERSON HINTON: Thank you, Mr. Schauer.
That is not unusual for the Board. We have had other Council
members here and take them out of turn to accommodate their
schedules. Ms. Ambrose, we will be happy to hear from you.

6 MS. AMBROSE: Thank you, Madam Chair, and
thank you, Mr. Risherg, for allowing me this time. This statement is
about the residential character of Capitol Hill. And I think that that is
what this case is about. It is not a question of whether certain
structures along East Capitol Street are commercial or
noncommercial. It is a question of whether they are nonresidential.
And I think that Mr. Risherg's and Mr. Pride's statements about the
number of buildings as you walk along a very short stretch of East
Capitol Street gives weight to what I am about to say to you.

15 I am Sharon Ambrose. I am the Ward 6 City Council
member. As a 30-year resident of Capitol Hill and a long time
participant in issues of planning, zoning, and preservation, as a senior
City Council legislative staffer, I have worked with community
organizations to insure the integrity and vitality of the Ward's
residential neighborhoods.

21 Residential Capitol Hill is very vulnerable to the
pressures of certain businesses and nonprofit organizations that see
the obvious commercial and logistical advantages of proximity to the
corridors of power and the seat of this nation's government. In fact,
the property at issue in this case, 224 East Capitol Street, was the
subject of a previous application for a change in nonconforming use

from lawyers offices to lobbying offices for the American Cancer Society² That application was rejected. I urge this Board to similarly reject this application by the Supreme Court Historical Society to turn this property into its headquarters.

5 Thoughtful planning argues against any diminution of the residential character of the Capitol Hill community. The proposed use is contrary to public policy as enunciated in the comprehensive plan, particularly the Ward 6 plan element, which states that the objective of the plan is to reduce the incompatible land uses in residential areas and neighborhoods and to enforce regulatory tools to reduce its potential change in the overall character of the Ward 6 area.

12 In the matter of the Cancer Society, the architect of the Capitol found office uses to be incompatible with the Capitol interest overlay zone and the master plan for the Capitol of the United States¹⁵ I am both surprised and concerned that in this case this architect appears to have articulated a different position.

17 I am also very distressed by the report of the Office of Zoning⁸ which guts the obsolete mansion section of zoning regulations of any meaning and opens all residentially zoned structures in historic districts to conversions for office use. This section of the code, which as I understand the legislative history, was written into zoning to allow for saving the grand old buildings in such locations as Georgetown and upper Massachusetts Avenue, N.W. This action was taken in the mid-1970's when prospects for residential use of such structures was considered unlikely. Those conditions no longer pertain. In fact, I would point out that on East Capitol Street between the Capitol and

8th Street, there have in recent years been built 6 brand new grand mansions, if you will, which were very easy for the builder to sell. I believe that there is a growing market for some of these large buildings to be returned to residential uses.

5 In the meantime, saving grand old mansions has come to mean converting generously built homes into office space. Capitol Hill has become a target for such efforts which are a blatant misapplication of zoning. Among the more egregious examples are the Waterston House, which was allowed to become the Cato Institute, an institution which has since vacated the property leaving the lovely residents to serve currently as home to the headquarters for the Indian Gaming Commission.

13 In the case at issue, an ordinary house with 4,500 square feet and 2,300 square foot lot is proposed as the new home for the Supreme Court Historical Society. The Lutheran Church just down the street has filed for an obsolete mansions variance. It may be that they have changed their application to a different exception.

18 I fear, however, that soon much of residential Capitol Hill will be laid out before the BZA as subject properties to be essentially cut out of the fabric of community life and sealed off as 9 to 5 workplaces for employees who will leave and return to their suburban homes as soon as the sun goes down. Should this sound like an exaggeration, just read the report of the Zoning Office and look at the map that Mr. Risherg has just shown you.

25 The argument supporting the request for a variance is it is impossible to increase the size of the building, both from a

practical and historical perspective. It is in a historic district and is constrained by the size of the lot. By this time, it must be evident to the Zoning Commission and everyone else that Section 217, the obsolete mansions provision, has not served to save anything, but instead is being used to drive holes into the residential portions of historic districts. That was not its intended purpose.

7 I understand that the Office of Planning has proposed in the past to eliminate Section 217. I have discussed this issue with the Office of Planning just recently and have encouraged them to pursue that. I urge the Zoning Commission to do just that as soon as possible. I will be introducing language in this round of comprehensive plan amendments to make sure that the obsolete mansion section of the zoning code is eliminated because it is truly obsolete and dangerous to the maintenance of our residential historic districts.

16 The preservation, support, and enhancement of this city's residential neighborhoods is absolutely essential to the future of the District of Columbia. All the downtown planning and economic development incentive zone schemes that everyone dreams up will not insure a viable municipality unless our residential neighborhoods are vibrant pleasant places to live and continue to retain and attract the residential taxpayers who are the bedrock revenue base of any city. There are very few in-town neighborhoods anywhere in the nation that have the sense of small town community that the neighborhood called Capitol Hill possesses. I urge you to assist in preserving the integrity of this very special community by refusing the

request before you today. The obsolete mansions exception provision of the zoning regulations as referenced in this case is a loose thread in the zoning quilt that has the potential to begin the unraveling of the fabric of our residential community. I urge you to reject the application before you. Thank you, and thank you for letting me come out of turn.

6 CHAIRPERSON HINTON: Before you go, are there any questions from Board members?

8 MS. RICHARDS: I have none.

9 CHAIRPERSON HINTON: Any questions from the parties? No. Thank you for joining us. Mr. Schauer, you were finished with cross examination?

12 MR. SCHAUER: I believe I have covered my questions.

14 CHAIRPERSON HINTON: Does the ANC wish to cross examine the first witness? Thank you. Mr. Risherg, did you have other witnesses?

17 MR. RISHERG: Yes. I am waiting for Ms. Mitten to come. I have a question as we wait. Mr. Lyons, if I understand correctly, told us that there were two intervening exhibits. I don't know what the second one is. I take it that Ms. Ambrose's statement is one of the two?

22 CHAIRPERSON HINTON: That would be 41 and 43 that you are asking about?

24 MR. RISHERG: Her statement is 42?

25 CHAIRPERSON HINTON: No. I am saying that you are asking about what 42 and 43 are? Because you have 41 and 44.

1 MR. RISHERG: That is right.

2 MR. LYONS: Mr. Risherg, Exhibit 42, which follows
your Exhibit 41, that is the request for party status by the Capitol Hill
Restoration Society?

5 MR. RICHARDS: I have not seen the document.

6 MR. LYONS: And 43 is their actual statement,
response to applicant's prehearing statement by the Capitol Hill
Restoration Society.

9 MR. RICHARDS: Might I look for the request for
status? I was mistaken. Exhibit 42 is a one sentence letter, Mr.
Lyons, that was sent to me by facsimile by the Society. So, I've seen
that and I have seen Exhibit 43.

13 Prior to calling Ms. Mitten, who is our next witness,
ma'am Chair, I would like to note as a tactical matter that Mr. Schauer
moved for party status and you summarily granted it. I would have
opposed that motion for the following reasons, and I'm not trying to
make a big point of this, but I think I have to preserve my point.

18 Number one, the Zoning Act and the Board's
regulations in identical language give party status, of course, to
anyone who is aggrieved by a decision arising under the Zoning Act. I
don't believe that anyone claims that to have been aggrieved by any
decision.

23 CHAIRPERSON HINTON: There hasn't been a
decision there, so I think you're quoting the wrong regulation, Mr.
Richards.

26 MR. RICHARDS: Now, I'm doing this sequentially.

So I don't believe that that's the basis for the decision, and I think that's exactly what you just said.

3 The Board also by its regulations provide that anyone who has a special right that would be effected is to be accorded party status. I don't believe that there is any special right that has been urged by the Capitol Hill Restoration Society. Instead I believe that there is a general interest that it has urged, and therefore my position in respect to party status is that there's not been a showing of a basis for party status. Instead, there has been a showing of a basis to be called by the Board as a witness under its regulations and for that reason I would note an opposition to the granting of the motion of --

12 CHAIRPERSON HINTON: Thank you. Your opposition is noted.

14 Are you ready to move on?

15 MR. RICHARDS: A brief recess. Apparently Ms. Mitten is right across the street.

17 CHAIRPERSON HINTON: No. I don't think so, Mr. Richards. I think we're going to move on.

19 MS. BENNETT: Can we hear when she comes.

20 CHAIRPERSON HINTON: I mean there is a responsibility of the applicant to have their case ready.

22 MR. RICHARDS: Oh, there's absolutely no question. I'm not saying that I could justify it at all. I thought that she had been called when Mr. Pride took the stand, and I found out only when he sat down that she had not.

26 CHAIRPERSON HINTON: We're going to have to

move along.

2 MR. RICHARDS: I can, through Mr. Pride, cover the
introduction to Ms. Mitten.

4 CHAIRPERSON HINTON: I'm sorry, why do we need
an introduction from one witness for another witness? I'm not clear.
Don't we have a report from this Ms. Mitten in the record?

7 MR. RICHARDS: That's right.

8 CHAIRPERSON HINTON: Can we stand on that
report?
9

10 MR. RICHARDS: No, you do not have the full report
in the record yet. That's --

12 CHAIRPERSON HINTON: And why is that?
Applicants have a requirement to supply their reports 14 days in
advance.

15 MR. RICHARDS: We supplied the summary
statement from the report. We did, along with our prehearing
statement.

18 MS. BENNETT: This is the problem: the reason why
you're requested to have all their materials in 14 days ahead of time is
so that if there is opposition, they have an opportunity to review your
materials and come here prepared to cross examine the witnesses
you've offered.

23 MR. RICHARDS: I understand.

24 MS. BENNETT: As you now come in with a 30 page
report, then they are at a disadvantage.

26 CHAIRPERSON HINTON: That's right.

1 MS. BENNETT: As are we, in fact. I mean, because
 we have to sit here and listen and pay attention. We certainly don't
 have an opportunity to read and come prepared to thoroughly
 question your witnesses. Do you see what I'm saying?

5 CHAIRPERSON HINTON: Reports are required 14
 days in advance.

7 MS. BENNETT: Now the summary, of course, if we
 have that --

9 CHAIRPERSON HINTON: The summary testimony.

10 MS. BENNETT: -- is that we can always question the
 witness based on that. But when you come in at this stage of the
 game with a hefty report, it puts almost all of us at a disadvantage.

13 MR. RICHARDS: I'm quite aware of the thinking that
 Ms. Bennett and the Chair have expressed. When we filed a
 prehearing application statement no one had sought to appear as a
 party. No one had indicated a record in the opposition to this
 application. I became aware of opposition only, I believe, it was
 yesterday. Today is Wednesday. When I received the facsimile
 transmittal from a Mr. Schauer. In the meanwhile, we had filed the
 summary of Ms. Mitten's report.

21 So, on your first point there was no opposition. There
 was no person to serve it on. There was no reason to think that any
 third party was interested in the report. I discussed the report with Mr.
 Nyarko of the Office of Zoning and he did not indicate to me that he
 thought the summary was inadequate. I don't believe that the
 summary does anything but present a comprehensive view of Ms.

Mitten's conclusions. The full report is available for anyone who thinks that the comprehensive view is not accurately summarized in the report. 3

4 The Board's rule does state, its text is "submit a report or statement by the expert." I believe that the summary, which is not a cursory document, is a full statement by the expert. I believe we've complied with the rules. I believe that the summary clearly is more of a statement than I have customarily seen filed in such zoning cases. 8

9 So, I would suggest, Ms. Bennett, that if there is a problem, I don't think that there's going to be any reputation of the judgments of Ms. Mitten whose present, then we can address it then. 11

12 MS. RICHARDS: Madam Chairperson, as much as I was enjoying this colloquy on the law, I guess it's become moot since Ms. Mitten is here. 14

15 CHAIRPERSON HINTON: I guess it served its purpose since his witness is here. 16

17 MS. RICHARDS: Though we're quite sure you were prepared to go on for another 10 minutes without stopping to catch your breath if necessary. 19

20 MR. RICHARDS: Are you speaking to me, Ms. Richards? 21

22 MS. RICHARDS: Yes, sir.

23 MR. RICHARDS: I was really going to keep it to less than 10 24

25 MS. BENNETT: But the question is do we permit the

-- 26

1 CHAIRPERSON HINTON: Not a report, no, because
in 331026 --

3 MR. RICHARDS: 331--

4 CHAIRPERSON HINTON: 6.6 under prehearing
procedures and applications for filing applications, it says "No later
than 14 days before the date of the hearing the applicant shall file with
the Board any additional statements, information, briefs, reports,
including reports or statements of experts and other witnesses, plans
or other materials that the applicant may wish to offer in evidence at
the hearing." That means anything the applicant wants to offer is due
in 14 days before. I think that's pretty clear.

12 MS. BENNETT: Now Ms. Mitten is here and she's
going to be offered as a witness and --

14 CHAIRPERSON HINTON: Absolutely. She still has
an opportunity to give testimony, but no reports can be filed at this
time without a waiver.

17 MR. RICHARDS: I understand, Madam Chair. In
view of that ruling, I move that the summary by the witness be
received into evidence and then we will proceed on that basis.

20 CHAIRPERSON HINTON: I thought you said the
summary has already been filed?

22 MR. RICHARDS: Yes, it has been filed. I want to
make sure now it's considered part of the evidentiary record.

24 CHAIRPERSON HINTON: It's in the record.

25 MR. RICHARDS: Thank you.

26 Ms. Mitten, would you join us, please? Before you be

seated, would you just remain standing to be sworn in?

2 (Whereupon, the witness was duly sworn)

3 CHAIRPERSON HINTON: We need your name and
home address for the record, please?

5 MS. MITTEN: My name is Carol Mitten. My home
address is 1026 16th Street, Northwest, Apartment 701 in
Washington.

8 CHAIRPERSON HINTON: Thank you.

9 MR. RICHARDS: Would you also state, please, Ms.
Mitten, the name of your business and its address?

11 MS. MITTEN: My business name is Mitten &
Reynolds, Incorporated. The address is 717 5th Street, Northwest,
also in Washington.

14 MR. RICHARDS: And what is the nature of your
business, Ms. Mitten?

16 MS. MITTEN: I appraise commercial real estate.

17 MR. RICHARDS: Madam Chair, Ms. Mitten's report
contains her professional background. For the sake of expediting
matters, I would move to extract those pages from her report and
simply append them as part of the summary. We don't get into a lot of
detail except to be said that questions by the Board or Mr. Schauer
about her background?

23 CHAIRPERSON HINTON: This is her background
that you want to submit now into the record?

25 MR. RICHARDS: That's right.

26 CHAIRPERSON HINTON: Right. Yes, please.

1 MS. BENNETT: And that's so that she can be
accepted as an expert?

3 MR. RICHARDS: That's right, Ms. Bennett.

4 Would you very generally, Ms. Mitten, state your
professional qualifications, please?

6 MS. MITTEN: I have been an appraiser in
Washington, D.C. for the last 13 years. I have a bachelor's degree in
English and an MBA both from Ohio State University. I have been
qualified as an expert in several courts as well, and that's listed on my
résumé. And I have extensive experience appraising a whole range of
properties, commercial properties and my firm specializes in
appraising historic properties as well.

13 MR. RICHARDS: And at what page of your report,
give us the date of the report -- at what page of your report does the
résumé appear?

16 MS. MITTEN: The résumé is at page 31.

17 MR. RICHARDS: I'm just going to excise that page
and ask you is this the page 31 to which you were referring?

19 MS. MITTEN: Yes, it is.

20 MR. RICHARDS: All right. And do you have any
professional credentials granted by any national organization?

22 MS. MITTEN: Yes. I have the designation, MAI
designation from the Appraisal Institute and I'm also licensed
commercial appraiser in the District of Columbia.

25 MR. RICHARDS: Very well.

26 CHAIRPERSON HINTON: What are you member of?

1 MS. MITTEN: Member of the Appraisal Institute.

2 CHAIRPERSON HINTON: Do you have any
experience with residential property?

4 MS. MITTEN: Yes, I do. It's -- the type of residential
work that I do tends to be either historic properties or those that are --
I would classify them as estate properties.

7 CHAIRPERSON HINTON: Does the MAI designation
differentiate between commercial and residential?

9 MS. MITTEN: No. It applies to -- it speaks to a
breadth of experience and qualification to appraise both commercial
and residential property.

12 CHAIRPERSON HINTON: I agree.

13 MS. BENNETT: I would move to accept.

14 CHAIRPERSON HINTON: I agree. Accepted.

15 MR. RICHARDS: Thank you very much.

16 Ms. Mitten, were you retained at my request to
perform a professional evaluation of 224 East Capitol Street, N.W.?

18 MS. MITTEN: Yes.

19 MR. RICHARDS: And approximately when did that
occur?

21 MS. MITTEN: During the past month and a half, I
would say.

23 MR. RICHARDS: And what did you understand the
nature of your assignment to be?

25 MS. MITTEN: To compare the value of the property
under various programs of use.

1 MR. RICHARDS: Prior to being retained to undertake
that task, did you have any professional relationship with the Supreme
Court Historical Society?

4 MS. MITTEN: Yes.

5 MR. RICHARDS: And would you briefly tell us what it
is and when it occurred?

7 MS. MITTEN: I believe it was earlier this year and
perhaps longer ago than that, but within the last 12 months, certainly,
they were interested in buying another property in the immediate
vicinity of the one that's the subject of this case and they asked me to
appraise it.

12 MR. RICHARDS: Now, going back to the task that's
related to this subsequent assignment that you said you undertook a
month or so ago, tell us essentially what you did? What was the
method used by you?

16 MS. MITTEN: Well, this is the sales comparison
method that's used exclusively in this case, and I don't think that the
omission of the income capitalization approach makes a material
difference in my conclusions. But basically I examined what a
prospective purchaser would be willing to pay for the subject property
if it had permission under a special exception for non-profit office use,
what the value would be under its existing legally nonconforming use
as professional office and if the use of the property were restricted to
those uses that are permitted by right in the R-4 zone, which I
included specifically single family dwelling conversion or conversion
to a flat

1 MR. RICHARDS: Now, Ms. Mitten, what you just said
has a lot of meaning perhaps to the two of us, let's see if we can make
it even more fundamental.

4 Were you seeking to determine value under those
four alternative uses?

6 MS. MITTEN: Yes.

7 MR. RICHARDS: And what technique? I understand
you've made reference to the sales approach. Did you use in order to
determine value, and in answering that question would you tell us
what value means as used by you?

11 MS. MITTEN: All right. Value in this context is if
there were a sale, what the parties to the sale sold -- the seller the
property on and a hypothetical buyer what agreement they would
come to as to price is what I mean by value.

15 MR. RICHARDS: And what assumptions are you
making about the seller and buyer under those circumstances?

17 MS. MITTEN: That they are knowledgeable and that
they are acting for their own self interests and that they are free of
duress.

20 MR. RICHARDS: Very well.

21 And that's in respect to both, to each?

22 MS. MITTEN: Yes, right.

23 MR. RICHARDS: And the sales technique that you
use, the sales method that you use involves essentially what?

25 MS. MITTEN: For each type of use that was
contemplated, so for the existing use office and for the single family

dwelling I looked at sales of single family dwellings. For the hypothetical conversion to a flat, I looked at 2 unit and I think there was also a 5 unit building. But the sales of those types of properties and what were the transaction prices, and what did those prices tend to indicate about what the subject property would sell for.

6 MR. RICHARDS: And what was the valuation date that you used?

8 MS. MITTEN: June 13, 1997.

9 MR. RICHARDS: Now, you looked at two alternative uses of the subject property in a residential sense, is that correct?

11 MS. MITTEN: Yes.

12 MR. RICHARDS: And those two, just for the sake of clarity, were single family and use in flat use, F-L-A-T use?

14 MS. MITTEN: Yes.

15 MR. RICHARDS: And what does flat use mean?

16 MS. MITTEN: Two unit dwelling.

17 MR. RICHARDS: All right. Would you briefly describe for us the considerations -- strike that.

19 What opinion of value did you reach in respect of those two residential uses?

21 MS. MITTEN: Well, perhaps I should explain the methodologies are slightly different because for those two uses because the property is not in that configuration. So, there was an additional step in the analysis of the residential uses.

25 Hypothetically I had to estimate the value as though the property had been converted, in the first case, to single family

dwelling; in the second case, to a 2 unit building. And I estimated the value using sales comparison on that basis as though the conversion had taken place. Then I deducted the cost of making that conversion and the residual value is what an individual would pay for the property if that were the only use that was available.

6 MR. RICHARDS: And what were your residual values?

8 MS. MITTEN: For single family dwelling, \$509,000 and for the flat \$445,000.

10 MR. RICHARDS: Would you tell us what the difference in value for the two residential uses?

12 MS. MITTEN: Mainly because in the -- for the size of the building, which would make it for Capitol Hill a relatively large house, the market for single family dwellings on Capitol Hill is stronger than the market for apartments and people pay more for single family dwellings and for conversion because of the code requirements for multi-family, the conversion cost is also higher for the flat conversion as opposed to single family. So two reasons basically; the values tend to be higher for single higher and the conversion cost was lower.

20 MR. RICHARDS: Now, what are the conversion costs, and by that I'm asking not only to quantify but that you specify what particular ones you had in mind?

23 MS. MITTEN: All right. Well, I guess --

24 CHAIRPERSON HINTON: I think those are covered very succinctly in the second paragraph on page 5. Bathrooms, kitchen, that sort of thing, is that what your question is?

1 MR. RICHARDS: Yes.

2 CHAIRPERSON HINTON: Okay. Covered very
succinctly.

4 MR. RICHARDS: Thank you.

5 What value determinations did you make in respect of
the other two uses and specify those two uses, if you will?

7 MS. MITTEN: For the property as though the special
exception on that the owner is seeking has been granted for nonprofit
office use, \$634,000 and then for the property with its existing legally
nonconforming professional office use, \$666,000.

11 MR. RICHARDS: So, is it then a fair summary of your
findings is that the market value of the subject property, were the
existing use to continue, is 600 -- and you give the remainder
number?

15 MS. MITTEN: \$666,000.

16 MR. RICHARDS: And the market value of the subject
property were it converted to single family use you determine to be?

18 MS. MITTEN: \$509,000.

19 MR. RICHARDS: And the market value of the subject
property were it converted to two family or flat use you determine to
be? 21

22 MS. MITTEN: \$445,000.

23 MR. RICHARDS: And how many properties to
conclude, Ms. Mitten, did you examine in making your determinations
as to what I will now hold of three general categories if you have the
office use, single family and flat use respectfully?

1 MS. MITTEN: A total of 24 transactions were
examined.

3 MR. RICHARDS: And those transactions occurred
where?

5 MS. MITTEN: They're all located on Capitol Hill.

6 MR. RICHARDS: I have no other questions of this
witness.

8 CHAIRPERSON HINTON: Thank you. I have a
couple of questions.

10 What is the cost to convert the current nonconforming
office use to the proposed office use for the Society?

12 MS. MITTEN: Well, from my perspective, which is
evaluation perspective, the cost is zero because the existing
configuration is for office use. Now withstanding that, the Society
does have -- because I estimated the value as-is for office use, they
have cost that they anticipate incurring to reconfigure the space for
their own use.

18 CHAIRPERSON HINTON: Okay. Then why is there
is a difference between the nonconforming office use as-in at 666 and
nonprofit use at 634?

21 MS. MITTEN: That difference is derived from the fact
that the market for nonprofit office, the potential number of users for
that narrow use category is there are fewer potential users in that
category than in the professional office category, which makes the
property relatively less valuable because there are fewer potential
occupants.

1 CHAIRPERSON HINTON: Potential buyers. Are you
aware of a cost estimate for the conversions that the Society is
contemplating?

4 MS. MITTEN: Yes.

5 CHAIRPERSON HINTON: What would that value
be? 6

7 MR. RICHARDS: Did you ask what would that value
be or what would be the cost estimates, Madam Chairperson?

9 CHAIRPERSON HINTON: What are the cost
estimates to convert?

11 MR. RICHARDS: Thank you. Could you give us the
page number of your report when you find the answer, please, Ms.
Mitten? 13

14 MS. MITTEN: I'm not looking in my own report. I'm
looking in a report that was prepared by Horsey & Thorpe architects, I
believe in consultation with some other experts called Building
Evaluation and Concept Design. I don't know that there's a total.
They give separate cost categories depending on the level of work
that's accomplished. It's accumulative, sort of. Do you want the
accumulative number that was suggested? 20

21 CHAIRPERSON HINTON: Yes.

22 MS. MITTEN: It's over half a million dollars.

23 CHAIRPERSON HINTON: How much over? Do you
have a total? 24

25 MS. MITTEN: I don't.

26 CHAIRPERSON HINTON: Okay. But --

1 MR. RICHARDS: Madam Chairperson, Mr. Pride, I
believe² can go right to those numbers if you would like for him to take
the witness stand with Ms. Mitten?

4 CHAIRPERSON HINTON: That will be fine. Could
you answer⁵ that one question, what is the cost to convert this building
to your proposed use?

7 MR. PRIDE: \$834,000.

8 MS. BENNETT: Is that including the purchase of the
building?

10 MR. PRIDE: No.

11 MR. RICHARDS: That was raised, Ms. Bennett, ask
the question of the Chairperson. We're not saying that it has that
much in value, we're saying this is what the Society intends to do.

14 MS. BENNETT: Right. I understand.

15 CHAIRPERSON HINTON: Which, if you follow this
chart that I'm following that was on page 5 of the report where we take
the market value and subtract the cost to convert to get the value as-
is, the value as-is of this property is now negative \$200,000?

19 MS. MITTEN: I think that if I may offer an
explanation. There's no concepts at work. The concept that I was
examining as a market value concept, which is a seller and the
hypothetical buyers out in the market and what transaction price they
would agree to. Every buyer in the market place has in addition to
market value, which is competitive; they have to compete with other
prospective buyers, there's also a concept called investment value,
which is now the arena that you've entered by bringing in the cost to --

what the Society would pay to convert the property for their own purposes. And while from a market value perspective that would tend to indicate that there's negative market value, from an investment value perspective they would say our investment if we purchased the property for 600 and some odd thousand dollars, spend 800; their investment value would then be a million four.

7 CHAIRPERSON HINTON: And why doesn't investment value then apply to the conversion to the single family or apartment dwelling?

10 MS. MITTEN: Investment value applies to every individual investor. It's an intrinsic value. And, for instance, I think you've probably heard in discussing single family dwellings that if you are thinking about installing a swimming pool and saying it's going to cost you \$15,000 that it's probably not going to add \$15,000 to the value of your house. So from a market value perspective it's not recommended that you install a pool, but because you have perhaps children that like to swim or you yourself like to swim, it's worth it to you intrinsically to spend that money. So that's a worthwhile expenditure from an investment value perspective but not from a market value perspective.

21 CHAIRPERSON HINTON: So the proposal in front of us today is not worthwhile from a market value standpoint and yet that's how your chart compares it to the other alternatives; only based on market value and not based on investment value?

25 MS. BENNETT: But wouldn't that -- I mean, wouldn't you be at a loss to try to arrive at an investment value if you don't

have prospective users who could identify what the intrinsic value is to them? 2

3 MS. MITTEN: That's correct.

4 MS. BENNETT: You're at a loss to do that?

5 MS. MITTEN: Right, because it does differ from person-to-person or from entity-to-entity.

7 CHAIRPERSON HINTON: Okay. So have you looked for potential purchasers who would want to convert this to a residential unit to try to determine what that investment value would be? 10

11 MS. MITTEN: Let me just see if I can explain this in a slightly different way.

13 If this property were on the market, which it had been, and let's just say that the price that a whole bunch of people, they have to compete for this property. And some people want to convert it for single family dwelling units. Some people want to convert it to a flat. Some people want to convert it to nonprofit office use and some people want to continue the professional office use.

19 The seller knows what I know, which is that the market value that's suggested is that I can get as much as \$666,000 for my property because it's the highest and best use; it's the use that maximizes the value of the property.

23 CHAIRPERSON HINTON: Okay.

24 MS. MITTEN: But if someone who wants to convert it for single family dwelling use, they say to themselves I'm only willing to pay \$509,000 because that's all that makes sense economically to

me but I'm desperate to be two blocks from the Capitol. So I will pay the additional money, I will pay the increment that will allow me to compete with someone who wants professional offices. So if I am willing to pay \$666,000 --

5 MS. BENNETT: Or more.

6 MS. MITTEN: Or more. The difference between that and 509 is investment value to me because that's how bad I intrinsically want that property. It's where economics leave off and where, you know, personal desires take over.

10 CHAIRPERSON HINTON: Right. So and then in your assignment here in this project was to look at the value of the property under the programs of use, is that just the program of the Society or did you look in equal detail programs for single family and apartment conversions?

15 MS. MITTEN: Yes, and I want to say I didn't look at specifically what the Society intends to do with the property. I looked at them solely as one of some hypothetical potential number of nonprofit office users.

19 CHAIRPERSON HINTON: Okay. Okay. Very good.

20 Ms. Richards, you had a question?

21 MS. RICHARDS: I'll defer it, thank you.

22 MS. BENNETT: I have no questions. Thank you.

23 CHAIRPERSON HINTON: No. Did I interrupt or where you done? You were done?

25 MS. BENNETT: I believe I'm finished.

26 CHAIRPERSON HINTON: Okay.

1 MR. RICHARDS: But you raised a question I would
like just to go back to it, Madam Chair. I think she has answered it
quite clear, but I want to make sure that there is no confusion, if I
might. 4

5 Ms. Mitten, the \$600 plus numbers, and there are two,
that you assign as the market value for the use in its current
nonconforming status and its use for nonprofit office building office
use, those values reflect your determination of what the market says
this property is worth, is that correct?

10 MS. MITTEN: Yes.

11 MR. RICHARDS: Your values in respect -- and the
market value in those two uses, those two office uses, is based on the
property in its as-is condition, is that not correct?

14 MS. MITTEN: Yes.

15 MR. RICHARDS: That means that there would be no
need to make any changes physically to the property to put it to the
office uses, is that correct?

18 MS. MITTEN: Yes.

19 MR. RICHARDS: The as-is value determinations for
the two residential categories that you have described reflect a need,
do they not, to convert to change, to renovate the property in order to
make it useful for each of those respective residential uses?

23 MS. MITTEN: Precisely.

24 MR. RICHARDS: All right. So another way of saying
it -- 25

26 CHAIRPERSON HINTON: I think we understand.

1 Mr. Schauer, do you have any cross examination
 questions for the witness? And I will note for the record while you're
 coming up that the ANC representative is not here, so he will not have
 any questions.

5 MR. RICHARDS: Madam Chair, actually I didn't get
 the ANC -- what ANC was represented by that gentleman?

7 CHAIRPERSON HINTON: I don't know. He did not
 identify himself.

9 MR. SCHAUER: Ms. Mitten, I had a lot of difficulty
 following along because the two page summary that I have, which was
 attached to the prehearing statement, is labeled "Draft," and you seem
 to have introduced some things that aren't here like the value of the
 present nonconforming use which doesn't appear on the table here,
 but you have added it.

15 MS. MITTEN: That's correct, it's not included.

16 MR. SCHAUER: So I think that answered most of
 the questions I have, but I do have one question. In the prehearing
 statement on page 4 there are a couple of footnotes attributed to your
 office, one of them is the statement that nearly all the buildings in the
 block on either side of the property are occupied by the Lutheran
 Church or by others for retail or other nonresidential uses. And the
 other says there's also extensive nonresidential use of the buildings
 on East Capitol Street in the adjacent blocks between 3rd and 5th
 Street. In summary, there's virtually no residential use of East Capitol
 Street in the block in which the property is located and many
 properties in the two blocks immediate to the east are also used for

nonresidential purposes.

2 Is that correctly attributed to you or is this some -- did
you make these studies?

4 MS. MITTEN: No, I didn't. If I did, it was only in the
most general way of commenting. I did not examine the specific uses
to the property in those blocks.

7 MR. SCHAUER: It puzzled me greatly because when
I looked at the summary, the two page summary, it seems to make
almost no mention of the surrounding area. So this is not yours?
Whoever it is, it's not yours?

11 MS. MITTEN: That's correct.

12 MR. SCHAUER: One other question. Have you
viewed the interior of this building?

14 MS. MITTEN: Yes, I have.

15 MR. SCHAUER: Is there anything in this building that
is of historic value like plaster work or woodwork or inlaid floors, or
stairways, or anything like that you --

18 MS. MITTEN: I would feel comfortable saying nothing
on the interior.

20 MR. SCHAUER: If there ever was anything there, it's
gone?

22 MS. MITTEN: It's either gone or it's been covered up
and I didn't see it. But I think it's gone.

24 MR. SCHAUER: I have no more questions. Thank
you very much.

26 CHAIRPERSON HINTON: Thank you.

1 Mr. Richards?

2 MR. RICHARDS: That's concludes the presentation
on behalf of the applicant, Madam Chair.

4 CHAIRPERSON HINTON: Very good.

5 Next we move to government reports. We have a
report from the Office of Zoning, Mr. Nyarku.

7 MR. NYARKU: Good afternoon, Madam Chairperson
and other members of the Board. My name is John Nyarku, zoning
specialist at the Office of Zoning, OZ.

10 You have before you OZ's report in application
#162471, dated June 25, 1997. I would like to note that the Office of
Zoning has reviewed and analyzed this application as a special
exception under the first alternative listed in the announcement above.

14 The applicant is requesting a special exception under
sections 217 and 1202 and subsection 1201.3 to establish the office of
a nonprofit organization, a variance from the minimum gross floor area
requirement (paragraph 217.1(b)) copies of which are included. The
special exception requested here are, as I said, must comply with the
provisions of sections 217 and 1202, subsection 1201.3 of 11 DCMR.
We believe that the applicant complies with the major requirements of
these regulations.

22 The second portion is that the applicant is seeking a
variance from paragraph 217.1(b) of zoning regulations which
authorizes the Board to approve the use of the residential structure by
a nonprofit organization, and I quote here "The gross floor area of the
building in question not including other buildings is 10,000 square feet

or greater."

2 OZ believe that in this case is a result of the subject
property's existing gross floor area in that it is only approximately 50
percent of the size required by the zoning regulations. The applicant
cannot comply with the 10,000 square foot minimum requirement and
would suffer a practical difficulty if the requested variance is not
granted.

And I give examples of previous Board
rules. 8

9 OZ's recommendation is that the applicant has met
the burden of proof relative to the zoning relief being sought under
sections 217 and 1202 paragraph 217.1(b) and subsection 1201.3 of
11 DCMR.

13 OZ believes that the character of the neighborhood is
not likely to be affected adversely by their proposal and that the
proposed use of the facility will not impair the intent, purpose and
integrity of the zoning regulations. Therefore, the Office of Zoning
recommends approval of this application.

18 This concludes Office of Zoning's report.

19 CHAIRPERSON HINTON: Thank you. Are there any
-- 20

21 MR. NYARKU: And I will answer questions.

22 CHAIRPERSON HINTON: Thank you.

23 Are there any questions from Board members?

24 MS. RICHARDS: Did you take into account the
residential concerns raised by the Society in its opening statement
and raised by the council member, what does your office feel of the

residential dangers?

2 MR. NYARKU: I didn't understand that --

3 CHAIRPERSON HINTON: Are there any questions
from the applicant for the Office of Zoning, Mr. Richards?

5 MR. RICHARDS: Mr. Nyarku, did you take into
consideration the recovery by the neighborhood for residential use of
the Society's existing building if this application for special exception
were to be granted, did you weigh that, sir?

9 MR. NYARKU: No.

10 MR. RICHARDS: And so you're saying that even
though the Society's existing building would go back for residential
use and would therefore one resident, you did not consider that
necessary in reaching a favorable recommendation of the Office of
Zoning?

15 MR. NYARKU: No.

16 MR. RICHARDS: Did you take into consideration the
contribution that the Society makes to the economy of the District of
Columbia and it would be to your favorable recommendation?

19 MR. NYARKU: Yes.

20 MR. RICHARDS: Did you take into consideration the
nonresidential uses of other properties along East Capitol Street in
reaching your favorable recommendation?

23 MR. NYARKU: Yes.

24 MR. RICHARDS: Did you take into consideration the
recommendation of the architect of the Capitol in reaching your
recommendation?

1 MR. NYARKU: Yes.

2 MR. RICHARDS: Did you take into consideration the
area use -- strike that.

4 The use variance standard urged by the Capitol Hill
Restoration Society in making your favorable recommendation?

6 MR. NYARKU: No, because I didn't have access to
the report.

8 MR. RICHARDS: All right, sir.

9 Were you at the time of completing your report, of
doing your work, were you aware of the use variance tests that the
Capitol Hill Restoration Society urges?

12 MR. NYARKU: No.

13 MR. RICHARDS: Very well.

14 I have no other questions of the witness.

15 CHAIRPERSON HINTON: Thank you.

16 Mr. Schauer, do you have any cross examination
questions?

18 MR. SCHAUER: Yes. In your Office of Zoning report
you quote the French case. I presume you've read that case. It's
French v. Board of Zoning Adjustment.

21 MR. NYARKU: (No audible response).

22 CHAIRPERSON HINTON: Was that yes you've read
it? 23

24 MR. NYARKU: Yes.

25 CHAIRPERSON HINTON: Thank you.

26 MR. SCHAUER: There is a footnote in there I'd like to

call to your attention because it's footnote 13 and it states "In a memorandum filed contemporaneously with the hearing" -- this is a hearing before this Board -- " the Office of Planning advised the Board of its proposal to repeal section 217." Has your office changed its position about 217 since then?

6 MR. NYARKU: No, the Office of Zoning --

7 MR. RICHARDS: Wait a minute. I'd like to object to the question. The question presumes that this witness is from the Office of Planning. My understanding from his testimony is that he's from the Office of Zoning.

11 CHAIRPERSON HINTON: You are correct. He is from the Office of Zoning.

13 MR. SCHAUER: I'll withdraw my question about your office. But you read this report?

15 MR. NYARKU: Correct.

16 MR. SCHAUER: And you are aware that there was severe criticism at this time, and this is a fairly recent case now, there was criticism of section 217.

19 MR. NYARKU: Correct. Correct.

20 MR. SCHAUER: Did you take that into consideration at all in reviewing these materials?

22 MR. NYARKU: Yes, and in the case you have those who is pros and cons, and the -- I think the overriding factor is the agreement that is reached after everybody has given all the pros and cons in the submissions.

26 MR. SCHAUER: Let me turn to your report. On page

3 at the very bottom the sentence at the very end says "The practical difficulty in this case is the result of the subject property's existing gross floor area in that it is only approximately 50 percent of the size required by the zoning regulations." But I don't see in here anywhere any other indication of a practical difficulty. Is that the only practical difficulty you see facing this applicant?

7 MR. NYARKU: What I said was it's impossible to increase the size of the building both from a practical and historical perspective.

10 MR. SCHAUER: Right.

11 MR. NYARKU: And that where the building is in historic district and is constrained by the size in the lot. And that the only way is rather to increase it is not possible --

14 MR. SCHAUER: Right.

15 MR. NYARKU: -- and that, I believe, is a practical difficulty.

17 MR. SCHAUER: Yes, but there are no other practical difficulties -- you don't mention any, I don't believe, in your report unless I missed it. Are there any other practical difficulties facing this applicant besides the fact that he doesn't have 10,000 square feet?

21 MR. NYARKU: And I was addressing that issue.

22 MR. SCHAUER: Yes. You mention at the bottom of page 4 that the proposed use of the facility will not impair the intent, purpose and integrity of the zoning regulations. Is your office at all concerned that granting this area variance and this special exception will lead to copycat applications for the same kind of special

exception?

2 MR. NYARKU: No, I don't think so because if an exception will come before the Board and it is the duty of the Board to weigh all issues involved in that and take a decision. So this is a case-by-case.

6 MR. SCHAUER: Right. But if the only practical difficulty that need be shown is that the building isn't big enough, then anybody with even a very modest house could make the same application and make the same argument. Am I wrong about that? Is there some way of distinguishing?

11 MR. NYARKU: I'm not sure that I -- I think the Board is going to take a position, the members will take into consideration all other practice before deciding on that case.

14 MR. SCHAUER: Are there -- okay, that gets me back then, are there any factors that you see in this case besides just the deficiency in the 10,000 square foot and the fact that they can't build out the lot; that's the practical difficulty -- the only practical difficulty you see? Is that correct?

19 MR. NYARKU: Yes, the practice and other subsections of regulations that applicant has complied. So these agree all together will --

22 MR. SCHAUER: Right. I have no more questions.
23 Thank you very much.

24 CHAIRPERSON HINTON: Thank you.

25 MR. RICHARDS: Madam Chair, can I ask one question -- based upon a question I heard the first time from Mr.

Schauer?

2 CHAIRPERSON HINTON: We are running really, really late, so is this like absolutely imperative? I mean, could we possibly move on without it?

5 MR. RICHARDS: Well, I hate to say it's imperative, but I think very important. Really, it's a very good question.

7 CHAIRPERSON HINTON: Go ahead.

8 MR. RICHARDS: Mr. Nyarku, are you aware of any instance in which an applicant has sought to down zone the property from a nonconforming office use to a conforming use or a nonprofit office as in this instance?

12 MR. NYARKU: No.

13 CHAIRPERSON HINTON: Okay. We're going to move on to other government reports. Those would be the ANC's. Do we have ANC representatives here? We do not.

16 MS. BENNETT: Madam Chair, I think the gentleman who did come in has left. I would note that we have a letter in our records. As I understand and read it, it is from a committee of -- and I'm trying to look for it now.

20 CHAIRPERSON HINTON: I have two in front of me. Right. One from 6A -- the property is in 6A, is that right?

22 MS. BENNETT: The property is in 6A, but in that letter, I'm not mistaken, it's from a committee.

24 MR. RICHARDS: You've got two, I believe, you have one from a committee and one from the ANC.

26 MS. BENNETT: Full ANC. I'm flipping through right

now. 1

2 MR. RICHARDS: I believe that the one from the ANC
that I only discovered yesterday is, nonetheless, dated the 24th of
June. 4

5 MR. LYONS: The correspondence from ANC 6B is
dated June 24th.

7 MR. RICHARDS: What about 6A. Is 6A on the 18th.

8 MS. BENNETT: Yes.

9 MR. RICHARDS: I received it yesterday, but I didn't
understand why we'd not seen it before.

11 CHAIRPERSON HINTON: 6A is from June 18th.

12 MR. RICHARDS: I think actually it's Ms. Bennett who
can't find it and I'll just hand her this one, because I do have that
particular one.

15 CHAIRPERSON HINTON: Okay. And it does
mention that there was a meeting of one of the committees, but the
concluding paragraph says "ANC 6A gives highest priority to
preserving primarily residential nature of Capitol Hill. For this reason,
we are unlikely to support the conversion of residential property to
commercial uses even for nonprofit. However, the present situation
does not involve the conversion from residential. In fact, it is unlikely
that a buyer could be found who would be willing to bear the cost of
converting law offices to residential use." And it's signed by the
chairman, however it really doesn't address any sort of vote.

25 MS. BENNETT: Well then, that is exactly what I was
saying. 26 The vote that is quoted here is a committee vote.

1 CHAIRPERSON HINTON: Right.

2 MS. BENNETT: Six to zero. As far as I could tell in
the record, no ANC full commission vote stating the quorum and the
pros and the cons as a vote was taken.

5 CHAIRPERSON HINTON: You are right. So this
does not meet our criteria for giving great weight.

7 MS. BENNETT: That's exactly right.

8 CHAIRPERSON HINTON: However, we will accept it
as information from the ANC and realizing that the Zoning and
Licensing Committee voted.

11 MS. RICHARDS: I would be willing at the appropriate
time to consider opening the record to allow them to clarify their
position because it is signed by the chair of ANC 6A.

14 MS. BENNETT: That's right.

15 MS. RICHARDS: And I think that they probably
intended for their letter to speak for the ANC, and I'd like to be given
the benefit of that.

18 CHAIRPERSON HINTON: And to be given great
weight.

20 MS. RICHARDS: Yes.

21 CHAIRPERSON HINTON: We will consider that at
the end.

23 Let me move on to 6B, which is an adjacent ANC.
Based on -- the ANC voted at its properly noticed meeting of June
10th with a quorum of 7 commissioners present not to oppose the
application. So ANC 6B is not in opposition.

1 We have no other reports from the government.
We're going to move on to persons or parties in support. Seeing
none. Parties in opposition. Mr. Schauer, would you like to go first?

4 VOICE: May I have your attention please. May I
have your attention please. There has been an emergency reported
on your floor. Please leave the building by the nearest exit or exit
stairway. Do not use the elevators.

8 We're going to adjourn the meeting until after the
emergency.

10 (Whereupon, off the record at 3:08 p.m. until 4:42
p.m.) 11

12 CHAIRPERSON HINTON: We have lost a quorum.
We can't continue today. We're going to continue this case, and the
case that was next on the agenda, until July 23rd at 9:30 in the
morning.

16 We don't have a quorum. All we can do is adjourn the
meeting. That's all we can do.

18 (Whereupon, off the record at 4:42 p.m.)

19

20

21

22

23

24

25

26

1

2

3

4

5

6

7

8